

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 20, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2012AP1984
2012AP2027
STATE OF WISCONSIN**

Cir. Ct. No. 2010TP116

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO JA'PRAYSHA L.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LA'DREA L.,

RESPONDENT-APPELLANT,

RICKY B.,

RESPONDENT.

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO JA'PRAYSHA L.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

RICKY B.,

RESPONDENT-APPELLANT,

LA'DREA L.,

RESPONDENT.

APPEALS from orders of the circuit court for Milwaukee County:
CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

¶1 BRENNAN, J.¹ La'Drea L. and Ricky B. appeal from the trial court's orders terminating their parental rights to Ja'Praysha L. (born April 27, 2009).² They both argue that the trial court failed to properly consider the mandatory standard and factors set forth in WIS. STAT. § 48.426 before terminating their parental rights. We disagree and affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Under WIS. STAT. RULE 809.107(6)(e), this court is required to issue its decision within thirty days after the filing of the reply brief. In case no. 2012AP1984, La'Drea's letter indicating she would not be filing a reply brief was filed on January 17, 2013. As such, our decision was to be released on February 18, 2013. On this court's own motion, the decisional deadline of Rule 809.107(6)(e) is extended to the date of this decision, that is, February 20, 2013.

² By prior order, we consolidated both La'Drea's and Ricky's appeals "but only for purposes of sharing the record." However, because they raise nearly identical claims on appeal, we address their complaints in one written opinion.

BACKGROUND

¶2 In April 2010, a petition to terminate the parental rights of La'Drea and Ricky to their daughter Ja'Praysha was filed in the Milwaukee County Circuit Court. As to La'Drea, the petition alleged a failure to assume parental responsibility and continuing need of protection or services under WIS. STAT. §§ 48.415(6) and 48.415(2). As to Ricky, the petition alleged abandonment (3 months), abandonment (6 months), and failure to assume parental responsibility under WIS. STAT. §§ 48.415(1)(a)2., 48.415(1)(a)3., and 48.415(6).

¶3 La'Drea stipulated to grounds for termination on the continuing-need-of-protection-and-services ground. Following a factfinding hearing, the trial court found grounds existed for the termination of Ricky's parental rights based upon a failure to assume parental responsibility. The court found both La'Drea and Ricky to be unfit.

¶4 A dispositional hearing commenced on May 4, 2011, and was continued over several days. The court heard from many witnesses regarding La'Drea's and Ricky's respective roles in Ja'Praysha's life and also heard testimony regarding the suitability of three potential placements: Monica C., a maternal aunt; Desirae B., Ja'Praysha's paternal grandmother, and Lisa W., Ja'Praysha's foster mother.

¶5 Teiyjsha King, a case manager for the Milwaukee Bureau of Child Welfare ("BMCW"), testified that Ja'Praysha had been placed with Lisa and her husband since May 15, 2009, that it was likely that the couple would adopt Ja'Praysha if given the opportunity, and that Ja'Praysha would be able to enter into a more stable and permanent family relationship if the TPR petition was granted. King testified that she visits Lisa's home bi-weekly, that Ja'Praysha is

“shown lots of love,” that Ja’Praysha runs up to her foster siblings and gives them hugs and kisses when they come home, and that Ja’Praysha is very affectionate towards her foster parents. King also noted that she had heard Ja’Praysha call Lisa “mom.” King testified that Lisa has been in communication with Monica, the guardian of La’Drea’s three older children, is willing to allow sibling visits, and understands their importance. King further noted that Lisa went to Monica’s home on Christmas Eve and brought the children presents. King testified that Lisa is willing to allow contact between Ja’Praysha and La’Drea on birthdays and special occasions like holidays.

¶6 Lisa, the foster mother, testified as well. During her testimony, she admitted that in 1996 she was charged with felony child abuse for whipping a foster child in her care. The charge was later reduced to battery, and Lisa was convicted.

¶7 Based on Lisa’s testimony regarding her criminal history and her alleged history of “financial instability,” La’Drea and Ricky each filed a motion to transfer placement to Monica, the maternal aunt, and Desirae, Ja’Praysha’s paternal grandmother, respectively. The trial court took extensive testimony on Ja’Praysha’s placement with Lisa.

¶8 After hearing argument by all of the parties, the trial court indicated from the bench that it had not reached an immediate decision. The trial court specifically remarked that it had “no idea what I’m going to do at this point,” but that it would issue a written decision in a few days.

¶9 Shortly thereafter, the trial court issued a thoughtful and carefully crafted three-page decision. As the substance of that decision is the basis for the parents’ appeals, we set forth those portions relevant to our analysis here:

Some of this is clear; the rest of it is very unclear and inordinately frustrating as the interests and welfare of an innocent little girl [are] at stake. ...

It is clear that Ja'Praysha needs alternative permanence. She has been our responsibility for nearly all of her life. [La'Drea] has demonstrated no capacity or even inclination to safely and appropriately parent her. Her own substance abuse issues, antisocial personality and, yes, her lifestyle choices (rendering her largely unavailable to parent her child/ren and bringing her constantly in contact with alcohol and, at best, less than desirable, if not dangerous, individuals) are critical aspects of her inability to safely parent. One can only surmise as well that she finds it inconvenient and too demanding. She is perfectly content to let others bear the responsibility for all of her children. [Ricky] has embraced a wholly antisocial and dangerous lifestyle that has him constantly involved in the criminal justice system and resulted in him being victimized and permanently disabled. While he talks a good game, I do not anticipate that will change.

....

[I]t is clear that [Desirae] is willing, but not fit. I seldom rain the sins of the children on the parent. Lots of kids end up on [Ricky's] path despite the best efforts of their parents. However, I won't turn a blind eye to the fact that starting at a young age [Ricky], while under the authority of his mother, was involving himself in criminal behavior. Much more importantly, her testimony that her relationship to her son was not fraught with aggression and violence directed towards her is wholly lacking in credibility. In that, and noting that both she and [Monica] do not view guardianship as anything more than a way station on the path of eventual return to one of their birth parents, I have no confidence in her ability to protect Ja'Praysha on a long term basis as either a permanent guardian or adoptive parent. Her petition for guardianship is denied.^[3]

I also think it is clear that [Monica] is willing, but not fit. As noted, she does not understand the concept of legal permanence and views herself as surrogating for the parent until Ja'Praysha goes home. She is allowing

³ La'Drea and Ricky appeal only from their respective orders terminating their parental rights. The order denying Desirae's guardianship petition is not before us on appeal.

[La'Drea] to take Ja'Praysha's siblings for weekends at a time (according to her testimony) or as much as a week at a time (according to [La'Drea's] testimony). For the reasons stated above, that clearly is not safe for those children and I would have no confidence that she would not subject Ja'Praysha to the same risks as a guardian or adoptive parent.

I simply do not know where to start with [Lisa]--there is no clear answer here. I am a big believer in redemption. ... Embracing redemption when the offending act is whipping a twelve-year-old foster child with an extension cord, resulting in a criminal conviction, is a major leap for me--even when it happened fourteen years ago and was "rehabbed." Exacerbating the problem is the distinct impression that the rehab came up short--well short! [Lisa's] self-excusatory rationalization of her conduct on the stand was, to be blunt, insulting. It certainly fully justifies the arguments and concerns that Ja'Praysha is two and cute now, but what happens when she is twelve and obstinate. I cannot help but ask myself is this the best we can do for our abused and neglected children.

The financial difficulties the family has encountered are somewhat less concerning to me. Her husband's health issues were a significant contributing factor and appear now to be under control. His criminal history is also of some notable concern.

All that, of course, is balanced against the fact [that] Ja'Praysha has been in [Lisa's] home for over two years. By all appearances, she is receiving safe and loving care in that home. [Lisa] has been permitted to adopt another child since her rehabilitation and letters of tribute and school documents submitted in support of the family support that proposition. Ja'Praysha has developed significant relationships with her foster parents and, as importantly, her foster siblings. Changing her placement to a new, recruited adoptive home is not an attractive alternative, particularly in the absence of any indication--credible or otherwise[---]of an imminent safety risk.

This child's safety and overall welfare are my responsibility. [Lisa] has earned some level of redemption. However, I am not presently prepared to stake my fulfillment of my responsibilities to this child on [Lisa]. This child will remain in [Lisa's] home under our watchful eyes until such time as I (or my successor) find a level of comfort in the safety of the placement to justify stepping out of the picture. This alternative will allow us to assure

that Ja'Praysha's relationship with her birth siblings is also nurtured and protected, an important consideration in her long-term development.

....

¶10 Based on the above rational, the trial court granted the petition to terminate the parents' rights, and named Lisa and her husband as Ja'Praysha's guardians. However, by its own motion, the court extended the CHIPS order until Ja'Praysha's eighteenth birthday "solely for the purpose of BMCW continuing to monitor and assure the safety of [Ja'Praysha] ... and that Ja'Praysha continues to see her birth siblings." The trial court further ordered that BMCW "have face to face contact with [Ja'Praysha] every week and to submit monthly reports to this court through ... July [2012]."

¶11 La'Drea and Ricky both appealed, but La'Drea then requested the matter be returned to the trial court for post-disposition proceedings. We granted her request. La'Drea then filed a motion for post-disposition relief, arguing, as she and Ricky both do here, that the trial court failed to properly consider the factors set forth in WIS. STAT. § 48.426. After hearing from the parties, the trial court addressed La'Drea's concerns and supplemented the record.

¶12 With respect to whether the trial court properly considered Ja'Praysha's age and health at the time of disposition, the trial court stated:

[The order] certainly addresses the length of time that the child was out of the home, and it certainly, in its broader context, is addressed by this Court. What's the relevancy of the child's age and health at the time of removal and her age and health at the time that the Court was making a dispositional decision? Well, the age has a bearing on what are the relationships here, and sort of dovetails with the Sub (c) [whether the child has substantial relationships with family members that will be harmed if severed] and the Sub (b) [age and health of the child] ... criteria. What are the relationships of this child given her

age with the substitute care givers, with the birth parents, with extended relatives, etcetera? And the decision makes clear that because of the conduct of the parents, that this child has been in substitute care for, I believe I quote correctly, virtually all of her life.

....

This child did not have significant emotional or health issues. And the evidence was very clear that despite the concern about the prior conduct, that her health factors were being ably addressed in the foster parent's home and by clear implications. It was my position, a position that was wholly supported by the record, that by virtue of the parents' conduct, that they had, in effect, wholly abdicated the responsibilities of parenthood; hence, were not only not meeting the health needs of the child, the developmental needs of the child, but a demonstrated incapacity to meet the needs of the child.

So I don't agree that the Sub (b) criteria -- ... the age and health factor -- was not addressed. I would acknowledge that I probably should have been more explicit, and to whatever extent I need to be ... I am making that finding.

¶13 The trial court then went on to address concerns that it did not consider whether Ja'Praysha had a substantial relationship with her parents that would be harmed by termination:

I vehemently disagree with the proposition that I did not address the substantial nature or insubstantial nature of the relationship of the parents to this child. With respect to both of the parents, admittedly somewhat summarily with respect to the father, but far more explicitly, arguably still somewhat summarily with respect to the mother, I concluded -- a conclusion that is overwhelmingly supported on the evidentiary record -- that they had, to reiterate, wholly abdicated their responsibilities to this child.

When a Court makes that finding that you've wholly abdicated your parental responsibilities to a child, by definition, you do not have a substantial relationship with that child. And as is evident in this record, but without reference to the record, when you make that finding, by necessary implication, you conclude and find

that the parents' relationship, to whatever extent you can characterize it as, is a pervasively negative influence in the child's life. When you have a parent, and they have a legal and moral obligation to fulfill the responsibilities of parenthood to a child, and they choose instead to abdicate those responsibilities to other people; do drugs; get involved in the criminal justice system; have relationships with dangerous men, not only do they not have a substantial relationship, their relationship to the child is a pervasively negative affect on the child, and that's true with respect to this child. To the limited extent that in particular the mother was in and out of her life, by far, mostly out, that impact on the child -- I'll leave it at that.

Ultimately, the trial court denied La'Drea's motion for post-disposition relief.

DISCUSSION

¶14 Both La'Drea and Ricky assert on appeal that the trial court failed to properly consider the standard and factors set forth in WIS. STAT. § 48.426 when determining the disposition of proceedings. Having reviewed the trial court's findings, we conclude that the parents' complaints amount to nothing more than a disagreement with the trial court's proper exercise of discretion. As such, we affirm.

¶15 A TPR proceeding is a two-step process. *Steven V. v. Kelley H.*, 2003 WI App 110, ¶18, 263 Wis. 2d 241, 663 N.W.2d 817. "[T]he first step is a fact-finding hearing to determine whether grounds exist, and the second step is the dispositional hearing." *Id.* Here, the parents do not dispute that legal grounds existed to terminate their parental rights at the factfinding phase or that the trial court properly entered a finding that they were unfit. Consequently, only the dispositional stage is at issue on appeal.

¶16 At the dispositional stage, the trial court determines whether termination of a parent's rights is in the child's best interests.

WIS. STAT. § 48.426(2). Whether circumstances warrant termination of parental rights is within the trial court's discretion, and we will not reverse the trial court if the court applied the relevant facts to the correct legal standard in a reasonable way. *David S. v. Laura S.*, 179 Wis. 2d 114, 149-50, 507 N.W.2d 94 (1993).

¶17 At the dispositional stage, WIS. STAT. § 48.426(3) requires the trial court to consider the following six factors:

- (a) The likelihood of the child's adoption after termination.
- (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- (d) The wishes of the child.
- (e) The duration of the separation of the parent from the child.
- (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

See id.; *see also Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶29, 255 Wis. 2d 170, 648 N.W.2d 402. The trial court properly considered all those factors here when applying the best-interests-of-the-child standard.

¶18 *Likelihood of adoption.* Both parents argue on appeal that the trial court failed to consider the likelihood of adoption because it did not explicitly say those words. Ricky B., through his appellate counsel, further argues that it is “undisputed” that the current foster mother, Lisa, is not likely to adopt Ja'Praysha “due to her financial history and her criminal record.”

¶19 Although it did not say the precise words, the trial court clearly considered the likelihood and importance of Ja'Praysha's adoption by noting the child's young age (two years), her good health, the absence of any relationship to La'Drea and Ricky, and her successful adjustment to her foster home where the court found she received "safe and loving care" despite the court's reservations about Lisa's past battery conviction. The child's need for permanence was the court's reasoning for rejecting guardianship requests from the child's aunt and grandmother. The court noted that neither intended their guardianship to result in a permanent adoption, stating: "[Desirae and Monica] do not view guardianship as anything more than a way station on the path of eventual return to one of their birth parents." Recognizing Ja'Praysha's need for permanence, the court noted further concern in Desirae's ability to adopt, stating that her history left the court with "no confidence in her ability to protect Ja'Praysha on a long term basis as either a permanent guardian or adoptive parent." Similarly, the court noted with concern that Monica's choice to permit Ja'Praysha's siblings to spend extended periods of time with La'Drea was "clearly ... not safe for those children." As such, the court concluded that it had "no confidence that she would not subject Ja'Praysha to the same risks as a guardian or adoptive parent."

¶20 Contrary to Ricky B.'s contention that Lisa was not likely to adopt Ja'Praysha due to her financial history and past criminal conviction, the record reveals that Lisa had been approved to adopt Ja'Praysha by the BMCW, that Lisa's conviction was for battery,⁴ not felony child abuse, and that since that conviction she had successfully adopted another child. BMCW worker, King,

⁴ It is not clear from the parties' briefs and record citations whether Lisa was convicted of felony or misdemeanor battery.

testified that Lisa and her husband were committed to adopting Ja'Praysha, that they were approved to adopt the child, and that there was nothing about Ja'Praysha's age or health that presented a barrier to adoption. Furthermore, the trial court explicitly found that, since her conviction, Lisa "has been permitted to adopt another child ... and letters of tribute and school documents submitted in support of the family support that proposition." Neither La'Drea nor Ricky has set forth any evidence contradicting that finding. Thus, the record shows that the trial court properly considered the likelihood of adoption.

¶21 *Age and health of child.* The trial court's decision also addressed Ja'Praysha's age and health at the time of disposition when it noted that Ja'Praysha had been the responsibility of the State "for nearly all of her life." The court supplemented the record at the post-disposition hearing, noting that Ja'Praysha "did not have significant emotional or health issues. And [that] the evidence was very clear that ... her health factors were being ably addressed in the foster parent's home." The trial court's findings are supported by the record.

¶22 *Substantial relationships with parents and family members.* Certainly, the trial court also considered whether Ja'Praysha had substantial relationships with her parents or other family members and whether severing any of those relationships would be harmful. The trial court found that Ja'Praysha had been in foster care and out of her parents' care "for nearly all of her life," and that because of La'Drea's and Ricky's lifestyle choices and their decision to abdicate responsibility for Ja'Praysha, she had no substantial relationship with either parent. The court also expressly considered the importance of Ja'Praysha's relationship with her siblings and made certain to craft a disposition that would "allow us to assure that Ja'Praysha's relationship with her birth siblings is also

nurtured and protected,” finding that doing so was “an important consideration in her long-term development.”

¶23 *Wishes of the child.* While the trial court did not explicitly state that it was considering Ja’Praysha’s wishes when making its decision, that understandable oversight is likely because, at only two years old, Ja’Praysha was too young to express her wishes. However, it is clear from the court’s reference to the time Ja’Praysha had been living with Lisa, that is, “nearly all of her life,” and the court’s emphasis on the “significant relationships” that Ja’Praysha had developed with “her foster parents and, as importantly, her foster siblings,” that the court believed Ja’Praysha’s wish would be to stay with Lisa. Certainly, the tone and tenor of the court’s decision make it clear that it was attempting to anticipate what Ja’Praysha’s wishes would be if she were able to relate them to the court. No more is to be expected.

¶24 *Duration of separation of the parent from the child.* The trial court also considered the amount of time Ja’Praysha had been separated from her parents. The trial court stated in its written decision that Ja’Praysha had been in foster care “for nearly all of her life,” and noted that, as a result, “Ja’Praysha needs alternative permanence.” Indeed, the court commented that La’Drea, in particular, “is perfectly content to let others bear the responsibility for all of her children.” The parents’ lifelong detachment from Ja’Praysha was one of the court’s primary concerns when considering disposition.

¶25 *Likelihood of stable and permanent family relationship.* Again, the trial court did consider whether, as a result of termination, Ja’Praysha would be able to enter into a more permanent and stable family relationship. First, the court noted the instability of Ja’Praysha’s parents, finding that La’Drea “has

demonstrated no capacity or even inclination to safely and appropriately parent” and that Ricky “has embraced a wholly antisocial and dangerous lifestyle that has him constantly involved in the criminal justice system,” a lifestyle the court did “not anticipate ... will change.” The court also commented, with concern, that both Desirae and Monica did “not view guardianship as anything more than a way station on the path of eventual return to one of their birth parents,” an outcome the court found undesirable given La’Drea’s and Ricky’s poor choices.

¶26 Consequently, the court placed Ja’Praysha with Lisa because, among other reasons, “[c]hanging her placement to a new, recruited adoptive home is not an attractive alternative,” and noting that “[a]t some point, the Bureau and guardian will deem it appropriate to petition for adoption.” The trial court did not fail to consider the likelihood of a stable and permanent family relationship simply because the disposition crafted by the court did not guarantee such an outcome. The trial court is only required to *consider* the factors set forth in WIS. STAT. § 48.426(3); it is not required to ensure the factors are met. Such a requirement would be unworkable.

¶27 *Best interests of the child.* While the trial court never expressly invoked the phrase “best interests of the child,” it is plain from any reading of the court’s decision that Ja’Praysha’s safety and best interests were at the forefront of the trial court’s mind when rendering its decision. The parents, while arguing that the court failed to apply the standard, do not explain whose interests the court was furthering if not Ja’Praysha’s. Nor could they logically make such an argument. The trial court, while expressing frustration with the choices it was given regarding Ja’Praysha’s placement, thoughtfully crafted a decision that it believed would keep Ja’Praysha physically safe and emotionally secure. The court expressly acknowledged when rendering its decision that the facts presented to it

were “inordinately frustrating as the interests and welfare of an innocent little girl [are] at stake,” and later, before placing Ja’Praysha with Lisa, commented that Ja’Praysha’s “safety and overall welfare [were the court’s] responsibility.” That the trial court was primarily concerned with Ja’Praysha’s best interests in unassailable.⁵

CONCLUSION

¶28 The record shows that the trial court properly applied the best-interests-of-the-child standard and, in doing so, properly considered the WIS. STAT. § 48.426(3) factors. As such, we affirm its decision terminating La’Drea’s and Ricky’s parental rights.

By the Court.—Orders affirmed.

This order will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

⁵ Because we conclude that the trial court properly applied the best-interests-of-the-child standard and considered the WIS. STAT. § 48.426(3) factors, we need not address La’Drea’s complaint that the trial court’s failure to properly apply the standard and consider the factors denied her due process rights.

